



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of)
HERBERT D. HICKEY, et al.)

Appearances:

For Appellants: G. D. Stanislawski
and Associates

For Respondent: Jean Harrison Ogrod
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of **the** Franchise Tax Board in denying the claim of Herbert D. **Hickey**, for refund of personal income tax in the amount of \$51.00 for the year 1976, the claim of John M. and Juleda J. Swisher for refund of personal income tax in the amounts of \$78.00 and \$96.00 for the years 1973 and 1974, respectively, and the claim of Willis E. and Mildred N. Dismukes for refund of personal income tax in the amount of \$207.00 for the year 1976.

Appeals of Herbert D. Hickey, et al.

As the pertinent facts, issue presented, and appellants' representative in each appeal were identical, the appeals were consolidated for consideration. The pertinent facts and issue presented were likewise identical to those in the Appeal of Munson E. and Dorothy Moser, decided by this board on this same date, and thus these appeals were heard at the same time as the hearing in that appeal.

The question for decision is whether certain **monthly pension** payments received by the appellants during the years in question were subject to the California personal income tax.

Appellants are all former California residents previously performing services as employees in this state, while residents here. On their respective non-resident personal income tax returns for the years now on appeal, the appellants included as taxable, pension payments received by them from the pension funds of their former California employers. Subsequently, appellants filed amended returns, excluding the pension payments from California income and requesting refund of **tax** in the amounts and for the years indicated. Respondent determined that the pension payments constituted California source income of nonresidents, taxable by this state.

As already indicated, the parties agreed that the pertinent facts were identical to those in the Appeal of Munson E. and Dorothy Moser, also decided by this board on this date. **Therefore, we conclude, for the reasons stated in that opinion, that respondent's action should be sustained.**

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Herbert D. Hickey, for refund of personal income tax in the amount of \$51.00 for the year 1976, the claim of John M. and Juleda J. Swisher for refund of personal income tax in the amounts of \$78.00 and \$96.00 for the years 1973 and 1974, respectively, and the claim of Willis E. and Mildred N. Dismukes for refund of personal income tax in the amount of \$207.00 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day
of December, 1980, 'by the State Board of Equalization,
with Members Nevins, Bennett, Reilly and Dronenburg present.

Richard Nevins, Chairman

George R. Reilly, Member

Ernest J. Dronenburg, Jr. , Member

William_M. Bennett, Member

_____, Member